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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/542,758

12/19/2005

Bjarne Nielsen

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WILLIAM J. SAPONE  
COLEMAN SUDOL SAPONE P.C.  
714 COLORADO AVENUE  
BRIDGE PORT, CT 06605

EXAMINER

BECKER, DREW E

ART UNIT

PAPER NUMBER

1794

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/542,758	<b>Applicant(s)</b> NIELSEN, BJARNE	
	<b>Examiner</b> Drew E. Becker	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 4-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 11-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/19/05</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of group I in the reply filed on 3/3/09 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 4-10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim.

### ***Specification***

2. The disclosure is objected to because of the following informalities: the specification lacks section headings.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-3 and 11-17 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. Steps critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re*

Art Unit: 1794

*Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). The method of claim 1 does not positively recite an actual step of “thawing”.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-3 and 11-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

7. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: the actual step of “thawing”. The claims do not positively recite a “thawing” step.

8. Claim 1 recites “an apparatus for initial separation of the meat block before the meat block is placed in a rotating container”. It is not clear whether the “rotating container” is part of the claimed method or not. It is not clear whether the “rotating container” is a required limitation, or not. The “rotating container” has not been positively recited as a method step.

Art Unit: 1794

9. Claim 1 recites “for initiating a separation process of the meat block into individual pieces”. It is not clear the block needs to completely separated into pieces, or just partially separated.

10. Claims 2 and 16 recite “diagonals”. It is not clear what a “diagonal” is or how one would calculate a “diagonal”. It is not clear what axis would provide the basis for a “diagonal”.

11. Claim 11 recites pistons for “applying pressure to the block”. It is not clear whether this refers to the “pressure” step of parent claim 1, or some other “pressure” step at another point in the process.

### ***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Higashimoto [Pat. No. 4,512,523].

Higashimoto teaches a method for mincing frozen meat by providing an apparatus for initial separation of a frozen meat block into individual pieces by application of pressure (Figure 1, #1) wherein “pressure” is applied both by the ambient atmosphere as well as by the rotating crusher roll itself, and wherein the meat block inherently has pressure applied “over diagonals” since this is dependent upon the chosen axis.

***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Higashimoto in view of Walter [Pat. No. 1,950,763].

Higashimoto teaches the above mentioned concepts. Higashimoto does not specifically recite removing packaging from the frozen meat block. Walter teaches a method for manufacturing a frozen meat block in a package (Figures 3-4). Although not specifically recited, it would have been obvious to one of ordinary skill in the art to remove a packaging material from the frozen meat block of Higashimoto before processing, in view of Walter, since both are directed to meat processing, since Higashimoto already required placing a non-packaged frozen meat block into the mincing device, since frozen meat blocks were commonly packaged as shown by Walter, and since the packaging of Walter would have preserve the meat block and prevent contamination during storage.

16. Claims 11-12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higashimoto in view of Cotner [Pat. No. 2,241,807].

Higashimoto teaches the above mentioned concepts. Higashimoto does not recite using pistons with planar faces which cooperate with a firm opposite face to apply pressure to

Art Unit: 1794

the meat block, and applying this pressure over diagonals of the meat block. Cotner teaches a method for forming meat blocks by use of pistons with planar faces which cooperate with a firm opposite face to apply pressure to the meat block (Figure 1, #10, 14-16), wherein the meat block inherently has pressure applied "over diagonals" since this is dependent upon the chosen axis. It would have been obvious to incorporate the pressure-based block forming step of Cotner into the invention of Higashimoto since both are directed to methods of processing meat, since Higashimoto already required the use of meat blocks as the raw material but simply did not describe how they were produced, since meat blocks were commonly formed by pistons and platens as shown by Cotner, and since the pistons and platens of Cotner provided an efficient and effective means for forming meat blocks.

17. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higashimoto, in view of Cotner, as applied above, and further in view of Jones [Pat. No. 5,250,314].

Higashimoto and Cotner teach the above mentioned concepts. Higashimoto and Cotner do not recite the piston faces having elevations and depressions including at the corners. Jones teaches a method for molding meat products by using a three-dimensional piston face having elevations and depressions including at the corners (Figure 4). It would have been obvious to one of ordinary skill in the art to incorporate the three-dimensional piston face of Jones into the invention of Higashimoto, in view of Cotner, since all are directed to methods of meat processing, since Higashimoto already required the use of meat blocks as the raw material but simply did not describe how

Art Unit: 1794

they were produced, since meat blocks were commonly formed by pistons and platens as shown by Cotner, and since the three-dimensional piston face of Jones would have provided greater flexibility in choosing the shape of the meat block.

18. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Higashimoto, in view of Cotner, as applied above, and further in view of Bernard [Pat. No. 4,060,998].

Higashimoto and Cotner teach the above mentioned concepts. Higashimoto and Cotner do not recite means for detecting metal. Bernard teaches a method for processing meat by using a means for detecting metal (Figure 1, #34). It would have been obvious to one of ordinary skill in the art to incorporate the metal detector of Bernard into the invention of Higashimoto, in view of Cotner, since all are directed to methods of meat processing, since metal debris in the meat could cause injury to the consumer, and since the metal detector of Bernard would find any metal debris and thus prevent its inclusion in the final product of Higashimoto.

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Foroutanaliabad et al [Pat. No. 7,357,952], Yates [pat. No. 6,183,795], Haack et al [Pat. No. 5,667,153], Tnasley [Pat. No. 2,670,296], Hosokawa [Pat. No. 5,080,922], Kiczek [Pat. No. 4,992,289], Cook [Pat. No. 4,742,686], Seelig et al [Pat. No. 5,333,802], Stahmann et al [Pat. No. 6,224,932], Hoashi et al [pat. No. 7,306,820], and AU 9530402 teach methods of processing meat and other foods.



Art Unit: 1794

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/  
Primary Examiner, Art Unit 1794